

## PUBLIC HEALTH DEPARTMENT[641]

### Notice of Intended Action

Pursuant to the authority of Iowa Acts 2014, Senate File 2360, section 6, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 154, “Medical Cannabidiol Act Registration Card Program” Iowa Administrative Code.

These rules implement the Medical Cannabidiol Act, SF 2360, which permits the possession and use of cannabidiol as defined in the legislation. The rules add the definitions of “cannabidiol,” “department,” “intractable epilepsy,” “neurologist,” and “primary caregiver” as provided for in SF 2360, as well as definitions for “date of expiration,” “date of issuance,” “department of transportation,” “patient,” “permanent resident,” and “state.” The proposed rules provide for the receipt of a written recommendation from a neurologist by the department and the process for the issuance of a cannabidiol registration card to a patient or primary caregiver. The rules further provide for the protection of confidential patient and primary caregiver information.

Any interested person may make written comments or suggestions on the proposed rules on or before August 26, 2014. Such written comments should be directed to Deborah Thompson, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12<sup>th</sup> Street, Des Moines, Iowa 50319-0075. Comments may be sent by fax to (515) 281-4958 or by e-mail to [Deborah.Thompson@idph.iowa.gov](mailto:Deborah.Thompson@idph.iowa.gov) .

There will be a public hearing on August 26, 2014, from 11:30 a.m. to 1:00 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Ottumwa Regional Health Center	North Iowa Area Community College – 4
1001 E. Pennsylvania	500 College Drive
Ottumwa	Mason City
Iowa Western Community College - 1	Sioux City Public Library
2700 College Road	529 Pierce Street
Council Bluffs	Sioux City
Davenport Public Library	Lucas State Office Building
321 Main	Sixth Floor
Davenport	321 E. 12th Street
	Des Moines

This hearing will also be accessible via conference call. Please dial 1-866-685-1580 and use the pass code 5152814355.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Iowa Department of Public Health and advise staff of specific needs.

After analysis and review of this rule-making, no impact on jobs in Iowa has been found.

These rules are intended to implement Iowa Acts 2014, Senate File 2360.

The following is proposed.

Adopt the following **new** 641—Chapter 154:

#### CHAPTER 154

#### MEDICAL CANNABIDIOL ACT REGISTRATION CARD PROGRAM

**641—154.1(85GA,SF2360) Definitions.** For the purposes of these rules, the following definitions shall apply:

*"Cannabidiol"* means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that is essentially free from plant material, and has a tetrahydrocannabinol level of no more than three percent.

*"Date of expiration"* means one year from the date of issuance of the cannabidiol registration card by the department of transportation.

*"Date of issuance"* means the date of issuance of the cannabidiol registration card by the department of transportation.

*"Department"* means the Iowa department of public health.

*"Department of transportation"* means the Iowa department of transportation.

*"Intractable epilepsy"* means an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.

*"Neurologist"* means an allopathic or osteopathic physician board-certified in neurology in good standing and licensed under Iowa Code chapter 148.

*"Patient"* means a person who is a permanent resident of the state of Iowa who suffers from intractable epilepsy and has received a recommendation from a neurologist for the medical use of cannabidiol pursuant to Iowa Acts 2014, Senate File 2360.

*"Permanent resident"* means a natural person has physically resided in Iowa as the person's principal and primary residence for a period of not less than ninety consecutive days immediately before applying for a cannabidiol registration card and has been issued a valid Iowa driver's license or a valid Iowa nonoperator's identification card.

*"Primary caregiver"* means a person, at least eighteen years of age, who has been designated by a patient's neurologist or a person having custody of a patient, as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabidiol pursuant to the provisions of Iowa Acts 2014, Senate File 2360.

*"State"* means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**641—154.2(GA85,SF2360) Neurologist recommendation – medical use of cannabidiol.**

**154.2(1)** A neurologist who has physically examined and treated a patient suffering from intractable epilepsy may provide, but has no duty to provide, a written recommendation for the patient's medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if no other satisfactory treatment options exist for the patient and all of the following conditions apply:

*a.* The patient is a permanent resident of this state.

*b.* A neurologist has treated the patient for intractable epilepsy for at least six months.

For purposes of this treatment period, and notwithstanding Iowa Acts 2014, Senate File 2360, section 3, subsection 4, treatment provided by a neurologist may include treatment by a neurologist licensed in another state and in good standing.

*c.* The neurologist has tried and documented alternative treatment options that have not alleviated the patient's symptoms.

*d.* The neurologist determines the risks of recommending the medical use of cannabidiol are reasonable in light of the potential benefit for the patient and has documented a discussion of the risks and benefits with the patient or the patient's parent or legal guardian.

*e.* The neurologist maintains a patient treatment plan. The neurologist shall have the sole, exclusive authority to recommend the use and amount of cannabidiol, if any, in the treatment plan, and shall recommend in the treatment plan only the oral or transdermal administration of cannabidiol.

*f.* The neurologist shall be available to provide follow-up care and treatment to the patient, including but not limited to patient examinations; however this rule shall not restrict the authority of a neurologist to terminate the physician-patient relationship, provided that such termination is effectuated in accordance with 653 IAC 13.7.

**154.2(2)** The neurologist is required to use the written recommendation section of the application form provided for this purpose on the department's website ([www.idph.state.ia.us](http://www.idph.state.ia.us)).

**154.2(3)** The neurologist, or authorized persons in the neurologist's office or clinic, is required to complete the written recommendation section of the application form and send the application to the department's address as provided on the application form.

**154.2(4)** A neurologist who provides a written recommendation pursuant to this chapter shall maintain a record-keeping system for all patients for whom the neurologist has recommended the medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy.

**154.2(5)** A neurologist who provides a written recommendation pursuant to this chapter is required to participate in any survey that will be conducted by the department on the implementation of the medical cannabidiol act. Any such survey will adhere to the federal Health Insurance Portability and Accountability Act of 1996.

**641—154.3(85GA,SF2360) Cannabidiol registration card – application and issuance to patient.**

**154.3(1)** The department may approve the issuance of a cannabidiol registration card by the department of transportation to a patient who satisfies the following requirements:

- a.* Is at least eighteen years of age.
- b.* Is a permanent resident of Iowa.
- c.* Requests the patient's neurologist to submit to the department, pursuant to subrule 154.2, a written recommendation signed by the neurologist that the patient may benefit from the medical use of cannabidiol.

- d.* Is listed as the patient on the application form submitted to the department, on a form created by the department in consultation with the department of transportation and available at the department's website ([www.idph.state.ia.us](http://www.idph.state.ia.us)) that contains all of the following:

- (1) The patient's full legal name, Iowa residence address, mailing address (if different from the patient's residence address), telephone number, date of birth, and sex designation. The patient shall not provide as a mailing address an address for which a forwarding order is in place.

- (2) A copy of the patient's valid photo identification. Acceptable identification includes:

- 1. A valid Iowa driver's license or,
- 2. A valid Iowa nonoperator's identification card.

- (3) Full name, address, and telephone number of the patient's neurologist.

- (4) Full legal name, residence address, date of birth, and telephone number of each primary caregiver of the patient, if any.

- (5) An attestation as to the truthfulness and accuracy of the information provided by the patient on the application.

**154.3(2)** Upon the completion, verification, and approval of the patient's application the department shall notify the department of transportation that the patient may be issued a cannabidiol registration card.

**154.3(3)** A cannabidiol registration card issued to a patient by the department of transportation shall contain all of the following:

*a.* The patient's full legal name, Iowa residence address, date of birth, and sex designation, as shown on the patient's Iowa driver's license or nonoperator's identification card. If the patient's name, Iowa residence address, date of birth, or sex designation has changed since the issuance of the patient's Iowa driver's license or nonoperator's identification card, the patient shall first update the patient's Iowa driver's license or nonoperator's identification card to reflect the current information, according to the procedures set forth in IAC 761— subrule 605.11(2), 761— subrule 605.25(4), or rule 761—630.3(321).

*b.* The date of issuance and the date of expiration.

*c.* A distinguishing registration number that is not the patient's social security number.

*d.* The patient's signature. The signature shall be without qualification and shall contain only the patient's usual signature and shall contain only the patient's usual signature without any other titles, characters, or symbols. The patient's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the patient's application for a cannabidiol registration card are true and correct. The patient's signature shall be captured electronically.

*e.* A color photograph of the patient.

*f.* A statement that the cannabidiol registration card is not valid for identification purposes.

**154.3(4)** A patient in possession of a valid cannabidiol registration card issued pursuant to this section shall not possess a quantity of cannabidiol in excess of thirty-two ounces.

**154.3(5)** An authorization to use cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of Iowa Acts 2014, Senate File 2360 or these rules for issuance of a cannabidiol registration card.

**641—154.4(85GA,SF2360) Cannabidiol registration card – application and issuance to primary caregiver.**

**154.4(1)** For a patient in a primary caregiver's care, the department may approve the issuance of a cannabidiol registration card by the department of transportation to a primary caregiver who satisfies the following requirements:

*a.* Is at least eighteen years of age.

*b.* Requests the patient's neurologist to submit to the department, pursuant to rule 154.2, a written recommendation signed by the neurologist that the patient may benefit from the medical use of cannabidiol pursuant to Iowa Acts 2014, Senate File 2360, section 4.

*c.* Is listed as a primary caregiver on the application form submitted to the department, on a form created by the department in consultation with the department of transportation and available at the department's website ([www.idph.state.ia.us](http://www.idph.state.ia.us)) that contains all of the following:

(1) The primary caregiver's full legal name, residence address, mailing address (if different from the primary caregiver's residence address), telephone number, date of birth, and sex designation. The primary caregiver shall not provide as a mailing address an address for which a forwarding order is in place.

(2) The patient's full legal name.

(3) A copy of the primary caregiver's valid photo identification. Acceptable identification includes:

1. A valid Iowa driver's license or,
2. A valid Iowa nonoperator's identification card.
3. A state-issued driver's license or nonoperator's identification card.
- (4) Full name, address, and telephone number of the patient's neurologist.

(5) An attestation as to the truthfulness and accuracy of the information provided by the primary caregiver on the application.

**154.4(2)** Upon the completion, verification, and approval of the primary caregiver's application the department shall notify the department of transportation that the primary caregiver may be issued a cannabidiol registration card.

**154.4(3)** A cannabidiol registration card issued to a primary caregiver by the department of transportation shall contain all of the following:

*a.* The primary caregiver's full legal name, current residence address, date of birth, and sex designation, as shown on the primary caregiver's state-issued driver's license or nonoperator's identification card. If the primary caregiver's name, current residence address, date of birth, or sex designation has changed since issuance of the primary caregiver's Iowa-issued driver's license or nonoperator's identification card, the primary caregiver shall first update the primary caregiver's Iowa issued driver's license or nonoperator's identification card according to the procedures set forth in IAC 761— subrule 605.11(2), 761— subrule 605.25(4), or 761— rule 630.3(321). If the primary caregiver is a resident of a state other than Iowa, the primary caregiver shall update the primary caregiver's state-issued driver's license or

nonoperator's identification card according to the procedures established in the primary caregiver's state of residence.

*b.* The date of issuance and the date of expiration.

*c.* A distinguishing registration number that is not the primary caregiver's social security number.

*d.* The primary caregiver's signature. The signature shall be without qualification and shall contain only the primary caregiver's usual signature without any other titles, characters, or symbols. The primary caregiver's signature certifies, under penalty of perjury and pursuant to the laws of the state of Iowa, that the statements made and information provided in the primary caregiver's application for a cannabidiol registration card are true and correct. The primary caregiver's signature shall be captured electronically.

*e.* A color photograph of the primary caregiver.

*f.* A statement that the cannabidiol registration card is not valid for identification purposes.

*g.* A statement distinguishing the cannabidiol registration cardholder as a primary caregiver.

*h.* The full name of each patient in the primary caregiver's care, as approved by the department in its notice to the department of transportation.

**154.4(4)** A primary caregiver in possession of a valid cannabidiol registration card issued pursuant to this section shall not possess a quantity of cannabidiol oil in excess of thirty-two ounces per patient.

**154.4(5)** An authorization to use or to act as a primary caregiver for a patient authorized to use cannabidiol or marijuana for medicinal purposes issued by another state, territory, or

jurisdiction does not satisfy the requirements of Iowa Acts 2014, Senate File 2360 or these rules for issuance of a cannabidiol registration card.

**641—154.5(85GA,SF2360) Tamperproofing.** The department of transportation shall issue a cannabidiol registration card by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the cannabidiol registration card without ready detection.

**641—154.6(85GA,SF2360) Denial and cancellation.** The department may deny an application for a cannabidiol registration card, or may cancel or direct the department of transportation to cancel a cannabidiol registration card, for any of the following reasons:

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue;

2. The applicant violates or fails to satisfy any of the provisions of Iowa Acts 2014, Senate File 2360 or these rules.

**641—154.7(85GA,SF2360) Appeal.** If the department denies an application for or cancels a cannabidiol registration card, the department shall inform the applicant or cardholder of the denial or cancellation and state the reasons for the denial or cancellation in writing. An applicant or cardholder may appeal the denial or cancellation of a cannabidiol registration card by submitting a request for appeal to the department by certified mail, return receipt requested, within 20 days of receipt of the notice of denial or cancellation. The department's address is Iowa Department of Public Health, Lucas State Office Building, 321 E. 12<sup>th</sup> Street, Des Moines, Iowa 50319-0075. Upon receipt of a request for appeal, the department shall forward the request within five working days to the department of inspections and appeals. A contested case hearing shall be conducted in accordance with chapter 176.

**641—154.8(85GA,SF2360) Duplicate card.**

**154.8(1)** *Lost, stolen, or destroyed card.* To replace a cannabidiol registration card that is lost, stolen, or destroyed, a cardholder shall present to the department of transportation the cardholder's valid state-issued driver's license or nonoperator's identification card.

**154.8(2)** *Change in card information and voluntary replacement.*

*a.* To replace a cannabidiol registration card that is damaged the cardholder shall surrender to the department of transportation the card to be replaced and present the cardholder's valid state-issued driver's license or nonoperator's identification card.

*b.* A patient or primary caregiver to whom a cannabidiol registration card is issued shall notify the department of a change in current residence address, name, or sex designation listed on the card, within ten calendar days of the change. To replace a cannabidiol registration card to change the current residence address, name, or sex designation listed on the card, the cardholder shall surrender to the department of transportation the card to be replaced and present a valid state-issued driver's license or nonoperator's identification card that has been updated according to the procedures established by the state of issuance to reflect the requested residence address, name, or sex designation.

*c.* To replace a cannabidiol registration card held by a primary caregiver to change the patient or patients listed on the primary caregiver's card, the primary caregiver shall submit a new application to the department pursuant to rule 154.4. A cannabidiol registration card issued pursuant to this paragraph shall not be considered a duplicate card.

**154.8(3)** A duplicate cannabidiol registration card shall have the same expiration date as the cannabidiol registration card being replaced, changed, or amended.

**154.8(4) *Iowa residents.*** A cardholder who is a resident of the state of Iowa must present an Iowa driver's license or nonoperator's identification card issued by the department of transportation. An Iowa resident may meet the requirement to present an Iowa driver's license or nonoperator's identification card by contemporaneously completing an application for a renewal or duplicate of an Iowa driver's license that meets the requirements of this subrule and has been approved by the department of transportation.

**641—154.9(85GA,SF2360) *Renewal.*** A cannabidiol registration card shall be valid for one year from the date of issuance unless cancelled pursuant to rule 154.6.

**154.9(1)** A cardholder seeking renewal of a cannabidiol registration card shall submit an application to the department at least 60 days prior to the date of expiration.

*a.* A patient applying for renewal of a cannabidiol registration card shall follow the procedure established in rule 154.3.

*b.* A primary caregiver applying for a renewal of a cannabidiol registration card shall follow the procedure established in rule 154.4.

**154.9(2)** A cardholder who fails to renew the cannabidiol registration card may not lawfully possess cannabidiol pursuant to this chapter.

**641—154.10(85GA,SF2360) *Confidentiality.*** The department shall maintain a confidential file of the names of each patient to or for whom the department approves the issuance of a cannabidiol registration card and the name of each primary caregiver to whom the department issues a cannabidiol registration card under Iowa Acts 2014, Senate File 2360 section 5.

**154.10(1)** Personally identifiable information of patients and primary caregivers shall be maintained as confidential and is not accessible to the public.

**154.10(2)** Personally identifiable information of patients and primary caregivers may be disclosed under the following limited circumstances:

*a.* To authorized employees or agents of the department and the department of transportation as necessary to perform the duties of the department and the department of transportation pursuant to this chapter.

*b.* To authorized employees of state or local law enforcement agencies located in Iowa, solely for the purpose of verifying that a person is lawfully in possession of a cannabidiol registration card issued pursuant to this chapter.

*c.* To a patient, primary caregiver, or neurologist, upon written authorization of the patient or primary caregiver.

**641—154.11(85GA,SF2360) Agreement with department of transportation.** The department may enter into a chapter 28E agreement with the department of transportation to facilitate the issuance of cannabidiol registration cards. The agreement may include provisions which govern the issuance, denial, and cancellation of cannabidiol registration cards and the sharing of information between the department and the department of transportation.

These rules are intended to implement 2014 Iowa Acts, SF 2360.